600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0400
202-220-0401 (fax)

Jason D. Oxman
Vice President and Assistant General Counsel

27 August 2002

Michelle Carey
Chief, Competitive Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WCB Docket Nos. 01-321 and 01-338

Dear Ms. Carey:

On August 23, 2002, BellSouth and Time Warner Telecom made an *ex parte* presentation to the Competitive Policy Division in the above-referenced dockets in order to explain their new proposal "for encouraging a competitive marketplace."[1] That proposal calls for, *inter alia*, the elimination of certain of the Commission's pro-competitive unbundling rules. Although the parties make several proposals for UNE relief, Covad responds specifically as to interoffice transport, which is the only UNE covered by the BellSouth/Time Warner Telecom *ex parte* that Covad purchases from incumbent LECs.[2]

The parties propose that interoffice transport should not be unbundled "where either the A or Z end office has 3 or more facilities based competitors."[3] In support of that proposal, the parties make the following claim: "At a minimum, CLECs are not impaired wherever there are 3 or more competitive transport providers in the vicinity." The Commission must recognize the facial invalidity of this proposal: it is based on the mere presence of collocated CLECs *in the area in which* interoffice transport UNEs are sought, without any analysis of whether the collocated carriers *actually provide* transport services over the central offices routes sought by requesting carriers. As set out in greater detail below, the "test" proposed by BellSouth and Time Warner Telecom would lead the Commission to eliminate interoffice transport based on a factor that has no relevance

[1] Letter dated August 26, 2002, from William W. Jordan, V.P – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Dockets No. 01-321 and 01-338, at 1 (Jordan Letter).
[2] Of course, it is difficult to understand why Time Warner Telecom is making UNE proposals to the Commission at all, given that Time Warner Telecom doesn't use *any* of the UNEs that it so readily asks the Commission to eliminate.
[3] Jordan Letter at 4.

whatsoever in determining whether a carrier is "impaired" without access to unbundled transport.[4]

As Covad explained in detail in its initial and reply comments in the Commission's *Triennial Review* rulemaking proceeding, true interoffice transport – that is, transport that connects incumbent LEC premises, such as central offices, to one other – is generally not available from any other provider than the incumbent LEC itself. Indeed, the Commission has absolutely no evidence on the record before it – because there is no such evidence – that competitive LECs have actually deployed facilities that duplicate the interoffice networks of the incumbent LECs. Instead, the Commission has (correctly) concluded that, in the absence of access to interoffice transport, competing carriers would be impaired in their ability to provide telecommunications services. For example, as Covad explained in its initial Comments, Covad has designed an efficient network architecture in which its data traffic is routed from ILEC end offices to ATM equipment that is located at other ILEC offices. For that architecture to work, Covad must be able efficiently to transport traffic from the many end offices at which it is collocated to the ATM equipment.[5] Yet even in the most densely populated cities – Chicago, New York, San Francisco and Washington, D.C. – the ILEC provides the only transport available to Covad in the majority of the offices in which Covad is collocated.[6] As Covad expands its collocations to include wire centers in somewhat less densely populated locations, transport from sources other than the ILECs will be even less available.[7] Other facilities-based carriers similarly provided evidence to the Commission of their dependence on ILEC transport.[8]

The BellSouth/Time Warner Telecom interoffice transport proposal echoes the Bell company argument in the *Triennial Review* that interoffice transport need no longer be unbundled if a CLEC is collocated in an office in which interoffice transport is sought from the ILEC.[9] The Bells relied on their UNE "Fact Report" to support their claim that interoffice transport need no longer be unbundled because of the availability of competitive fiber alternatives. As with the BellSouth/Time Warner Telecom proposal, the Bell "Fact Report" recommended eliminating interoffice transport UNEs based on the mere presence of a collocated CLEC, without any analysis of whether that CLEC actually served the interoffice routes sought by a requesting carrier. The "Fact Report" supports its argument by claiming that there is a competitive fiber provider collocated in 12% of Verizon COs, 13% of SBC COs, 19% of BellSouth COs, and 13% of Qwest COs.[10] Conversely, in 88% of Verizon COs, 87% of SBC COs, 81% of BellSouth COs, and 87% of Qwest COs, there is *not a single alternative fiber provider*.

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[4] 47 U.S.C. § 251(d)(2)(B).
[5] *See Covad Reply Comments*, WC Docket No. 01-338, at 59-66.
[6] Covad Comments, Shipley/Chang Declaration, WC Docket No. 01-338, at ¶ 18 & Table 1.
[7] Covad has announced plans this year to expand its network footprint significantly, by upwards of 100 central offices.
[8] *See, e.g.*, Allegiance Comments at 28-30; Sprint Comments at 44-45; AT&T Comments at 134-40.
[9] Pursuant to this proposal, the mere fact that Time Warner Telecom may be collocated with fiber facilities in certain central offices, even though those facilities connect to downtown office buildings instead of other central offices, would result in the elimination of interoffice transport UNEs.
[10] ILEC UNE "Fact" Report," WC Docket No. 01-338, at III-2.

On closer inspection, moreover, the "Fact Report" suggests there is far less competitive transport available even than that. The report states that its figures for CLEC fiber "may include some networks or parts of networks that CLECs operate with facilities leased from a third party, including an ILEC."[11] This concession renders the fiber calculation worthless – for all it appears there may be zero CLEC networks that exist without ILEC UNEs. The Report's claim that "alternative wholesale suppliers" may be offering interoffice transport,[12] thus appears to be nothing more than rhetoric. The Report does not cite a single example of a central office connected to another central office with wholesale suppliers. Nor does the BellSouth/Time Warner Telecom *ex parte* presentation provide even a single such example. This lack of proof powerfully suggests that there is no such wholesale supplier to be found.

In short, identifying collocation sites at a specific central office says nothing at all about whether competitive transmission facilities are available running from that office to another office. It is just as likely that the collocation is being used to run fiber from that central office to a large downtown office building, or to an IXC's point of presence. (this is, for example, the architecture of Time Warner Telecom's network.) Indeed, in their *Triennial Review* comments, the Bell companies concede that the competitive transport services they claim have been around since 1985 "involved the provision of "access" between large business customers and interexchange carriers"[13] and not central office to central office.[14] That being the case, it is more likely that the fiber of a collocated CLEC in fact connects to large businesses or to IXCs, and not to other central offices.[15]

Finally, it is important for the Commission to recall the reason that unbundled interoffice transport is so vital to the ability of competitive carriers to provide service. Covad cannot simply construct its own transport network as a substitute for access to ILEC dedicated transport. As with construction of loops, the ILECs had substantial regulatory assistance in construction of their transport networks. When the ILECs initially constructed their plant, they were guaranteed a particular rate of return and often provided eminent domain powers. Construction of transport is subject to the same high fixed/sunk costs as is the loop plant, including use of poles, ducts and conduit and payment for rights of way. A competitor constructing transport facilities on a particular route would have to incur those same costs regardless of how much traffic it carries.

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[11] ILEC UNE"Fact" Report at III-7 n. 34.
[12] ILEC UNE "Fact" Report at III-9 and n. 49.
[13] ILEC UNE "Fact" Report at III-7.
[14] Additionally, the cost of transport may become excessive if a CLEC must route traffic in a far less direct way than is necessary. Thus, if Covad were forced to direct traffic to a wholesaler's POP and then find a way to direct it back to the ILEC central office where Covad's ATM is located, the costs frequently would be excessive even if there were a way of transporting the traffic at all.
[15] For example, in its Triennial Review Comments, SBC claimed that CLECs have deployed at least 184,000 route miles of fiber. SBC Comments at 85. Leaving aside the 33.5 *million* kilometers of fiber deployed by the ILECs, *see* FCC Statistics of Communications Common Carrier Report, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/SOCC/00socc.pdf, at p.27, SBC provides no information about where that fiber is going. It does not cite a single example of an actual point-to-point, interoffice route that has fully competitive fiber deployed and actually available to CLECs.

Although CLECs like Time Warner Telecom have managed to gain a sufficient customer base to overcome economies of scale on a small number of transport routes (generally to large, urban center office buildings), on most routes there is not sufficient traffic to justify deployment of additional transport facilities, rather than use of ILEC facilities for which the fixed costs have already been paid. Construction would also be economically inefficient, as the ILECs have spare capacity in their transport networks that should be used before construction of alternative networks (it is interesting that no ILEC claims exhaustion of available ILEC facilities as grounds to eliminate UNE transport). The present financial troubles of many telecommunications carriers stem from the fact that too much fiber cable already has been laid on long haul routes. An unbundling regime should not attempt to force CLECs to deploy additional transport facilities by providing this as the only alternative to withdrawal from the market. Assuming CLECs remain in the market, duplicative deployment would not benefit the ILECs who are better off with the greater use of their transport facilities than use of facilities of alternative suppliers. The reason the ILECs nonetheless argue against unbundling is that they understand that without access to ILEC transport, CLECs would withdraw from the market altogether rather than attempting to deploy their own facilities.

Respectfully submitted,

/s/ Jason D. Oxman

Jason D. Oxman
Vice President and Assistant General Counsel

cc: Scott Bergmann
Robb Tanner
John Stanley
Uzoma Onyeije
Renee Crittendon
Christine Newcomb